

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILMER JENKINS,	§	
	§	No. 461, 2011
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	ID No. 0701012400
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: July 3, 2012
Decided: August 23, 2012

Before **HOLLAND, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 23rd day of August 2012, it appears to the Court that:

(1) Defendant-Below/Appellant Wilmer Jenkins appeals from his Superior Court conviction and sentence for Rape in the Second Degree. Jenkins raises two claims on appeal. First, Jenkins contends that the Superior Court abused its discretion by refusing to admit evidence of his conversation with the victim (“the Complainant”) about her sexual orientation and history to prove consent. Second, Jenkins contends that the Superior Court abused its discretion by allowing the jury to replay a recorded out-of-court statement in the jury room, rather than in the courtroom. We find no merit to these contentions, and affirm.

(2) During the events that follow, the Complainant believed that Jenkins was her grandfather. One morning, Jenkins went to the Complainant's apartment, which she shared with her great-grandmother. Jenkins instructed the Complainant to perform oral sex on him. When she resisted, Jenkins forced the Complainant to perform oral sex. He ejaculated in her mouth and on her clothing. During the assault, he also caused an injury to the Complainant's lip. After Jenkins left the apartment, the Complainant called 911 and reported the rape. The police took the Complainant's statement and then took her to the hospital. At the hospital, a forensic nurse examined the Complainant and took her clothing. Forensic testing showed that Jenkins's DNA was consistent with the sperm cells found on the Complainant.

(3) This assault was part of a pattern of abuse by Jenkins that stretched back to the Complainant's childhood. Although the Complainant believed that Jenkins was her maternal grandfather, a DNA test later indicated that the two were not biologically related.

(4) Following a jury trial, Jenkins was found guilty of Rape in the Second Degree. His conviction was affirmed on appeal to this Court.¹ Jenkins filed a motion for post-conviction relief alleging ineffective assistance of counsel. His conviction was vacated and he was granted a new trial, on the ground that trial

¹ *Jenkins v. State*, 2008 WL 4659805 (Del. Oct. 22, 2008).

counsel was ineffective for failing to seek suppression of Jenkins' interview with police based on inadequate *Miranda* warnings.² This Court affirmed on appeal.³

(5) Prior to his second trial, Jenkins moved *in limine* to admit evidence of the Complainant's past sexual conduct to show that the sexual acts in dispute were consensual. Jenkins sought to introduce hearsay testimony to show that the Complainant was bisexual and had engaged in prostitution. Jenkins also sought to introduce a conversation that he allegedly had with the Complainant about her sexual proclivities to show that the conversation led to a consensual sexual relationship.

(6) The Superior Court determined that Jenkins' initial affidavit in support of his motion was not sufficiently specific, and ordered that an affidavit sworn or affirmed on personal knowledge be filed. Jenkins submitted a supplemental affidavit, which provided in part:

[T]he first time that I had consensual oral sex with the complaining witness, this came about in the context of a conversation about the complaining witness's bi-sexuality and prostitution. She made these statements directly to me in the immediate time before these acts were performed and should be stated to the jury to place these things in context of why we had a sexual relationship.

Jenkins' supplemental affidavit also stated that the Complainant had told a third party that she was involved in prostitution.

² *Jenkins v. State*, 2010 WL 596505, at *1 (Del. Super. Feb. 18, 2010).

³ *State v. Jenkins*, 2010 WL 3368919 (Del. Aug. 26, 2010).

(7) After an initial misunderstanding about another judge's earlier ruling in the case, the Superior Court denied Jenkins' request under 11 *Del. C.* § 3508 for an *in camera* hearing to consider evidence of the Complainant's sexual conduct, stating:

I think that as far as the allegations of bisexuality and prostitution are involved, that the defendant has not made a threshold showing to go forward on that aspect of the complaining witness' history. And I look at, particularly, to Judge Stokes' letter of March 2010, where he said March 16th, 2010, that the affidavit must be sworn or affirmed on personal knowledge, not to the best of information, knowledge, or belief.

I think in order to get to this stage under the statute and under Judge Stokes' ruling, there has to be a specific offer of proof about the bisexuality or prostitution other than being incorporated by reference by Wilmer Jenkins's affidavit, which I reviewed.

(8) At his second jury trial, Jenkins was found guilty of Rape in the Second Degree and was sentenced to twenty-five years imprisonment at Level V, with credit for time served, and suspended after sixteen years for Level III probation. This appeal followed.

(9) We review the Superior Court's evidentiary rulings for abuse of discretion.⁴ If we determine that the Superior Court abused its discretion, we then determine whether the error rises to the level of significant prejudice to deny the

⁴ *Manna v. State*, 945 A.2d 1149, 1153 (Del. 2008) (citing *Pope v. State*, 632 A.2d 73, 78–79 (Del. 1993)).

defendant a fair trial.⁵ “An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances or so ignored recognized rules of law or practice to produce injustice.”⁶

(10) Jenkins first contends that the Superior Court abused its discretion by denying Jenkins’ request to present evidence of the Complainant’s sexual history or hold an *in camera* hearing regarding the evidence. Jenkins further contends that the Superior Court’s refusal to consider such evidence violated Jenkins’ constitutional right to present evidence and confront witnesses against him.

(11) This Court has explained that a defendant “has no constitutional right to present irrelevant evidence at trial.”⁷ Thus, “[e]vidence of the prior sexual conduct of an alleged rape victim is admissible only when the statutory procedure is followed and the court determines that the evidence proposed to be offered by the defendant regarding the sexual conduct of the alleged victim is relevant.”⁸ Further, “the admissibility of any prior sexual acts [of the Complainant] must be determined in light of the facts and circumstances at hand and the purposes of the rape shield law itself.”⁹ The purpose of Delaware’s rape shield law, codified in 11 *Del. C.* § 3508, is clear:

⁵ *Manna*, 945 A.2d at 1153 (citing *Seward v. State*, 723 A.2d 365, 372 (Del. 1999)).

⁶ *Harper v. State*, 970 A.2d 199, 201 (Del. 2009) (quoting *Culp v. State*, 766 A.2d 486, 489 (Del. 2001)).

⁷ *Wright v. State*, 513 A.2d 1310, 1314 (Del. 1986).

⁸ *Id.*

⁹ *Franklin v. State*, 855 A.2d 274, 279 (Del. 2004).

It seeks to allow defenses based on the complainant's credibility while protecting her from unnecessary humiliation and embarrassment. This ensures the cooperation of victims of sexual offenses. The purpose of § 3508 is not satisfied if evidence of prior sexual conduct may be offered and admitted simply by calling it another name.¹⁰

Section 3508 also sets forth a procedure to be followed to determine whether evidence of a complaining witness' sexual conduct is admissible in a rape prosecution to attack her credibility.¹¹ In a case involving any degree of rape, 11 *Del. C.* § 3509 further provides that “any opinion evidence, reputation evidence and evidence of specific instances of the complaining witness' sexual conduct, or any of such evidence, is *not admissible* by the defendant in order to prove consent by the complaining witness.”¹² A defendant, however, may offer “any evidence . . . to attack the credibility of the complaining witness” provided that it complies with the procedure in Section 3508.¹³

(12) Here, the Superior Court correctly found that the proffered affidavit regarding the Complainant's sexual history was insufficient to warrant holding an *in camera* hearing pursuant to Section 3508. Jenkins twice provided an affidavit explaining that his sexual relationship with the Complainant began after the Complainant disclosed her bisexuality and prostitution activities to Jenkins. In denying Jenkins' request for an *in camera* hearing regarding this offer of proof, the

¹⁰ *Scott v. State*, 642 A.2d 767, 771 (Del. 1994) (citations omitted).

¹¹ 11 *Del. C.* § 3508(a)(1)–(4); *Ketchum v. State*, 1989 WL 136970, at *3 (Del. Oct. 17, 1989).

¹² 11 *Del. C.* § 3509(a) (emphasis added).

¹³ 11 *Del. C.* § 3509(d).

Superior Court explained that Jenkins had “not made a threshold showing to go forward on [the alleged bisexuality and prostitution aspects] of the complaining witness’ history.” Jenkins provided no detail as to the specific time, location, or content of his conversation with the Complainant, or specifically why the conversation was relevant as to consent. Nor did Jenkins proffer any evidence of the Complainant’s prior sexual activity other than his own general assertions and hearsay statements. The information that Jenkins sought to admit also reflected the exact kind of evidence that Section 3508 seeks to preclude—vague evidence of the victim’s sexual history to show consent. The Superior Court did not abuse its discretion in denying Jenkins’ motion for *in camera* review on the basis that Jenkins’ proffer was insufficient.

(13) Jenkins next argues that the Superior Court abused its discretion by allowing the jury to replay a prior-recorded statement of the Complainant’s police interview in the jury room, rather than in the courtroom. Jenkins contends that the Superior Court’s decision allowed the jury to impermissibly play and pause the recording rather than watch it continuously.

(14) During deliberations, the jury requested the ability to review the Complainant’s recorded out-of-court statements to the investigating officers. Jenkins requested that the jury re-review the recording in the courtroom in front of counsel. Instead, the Superior Court instructed the jury that the requested

recording should only be played again once in the jury deliberation room and then returned to the bailiff.

(15) “Juries are presumed to follow the trial judge’s instructions.”¹⁴ Here, Jenkins does not provide any evidence that the jury disregarded the Superior Court’s instructions; he merely speculates that the jury could have ignored the instructions. Because Jenkins offers no evidence to overcome the presumption that juries follow the trial judge’s instructions, his claim is without merit.¹⁵

(16) NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹⁴ *Revel v. State*, 956 A.2d 23, 27 (Del. 2008); *Brown v. State*, 2001 WL 898589, at *2 (Del. July 31, 2001) (“A jury is presumed to understand and follow the instructions given by the Superior Court.”).

¹⁵ *See Brown*, 2001 WL 898589, at *2 (holding that mere speculation that jury did not follow trial judge’s instructions is insufficient basis to grant new trial).